

PROCEDURAL BACKGROUND

Plaintiff filed the Complaint in this action on January 28, 2022 (ECF No. 1) and Defendant filed its Answer and Counterclaims on March 14, 2022 (ECF No. 7). On May 12, 2022, this Court entered a Discovery Plan and Scheduling Order (ECF No. 18), which set the close of fact discovery on February 1, 2023. The Order further noted that if the Court is unable to issue a Claim Construction Order by January 19, 2023, the Court may reset the subsequent deadlines as requested by a party or by stipulation. On January 13, 2023, the parties filed their first stipulation for extension of case deadlines, which the Court granted on January 19, 2023. (ECF Nos. 47, 50.) On April 17, 2023, the parties stipulated and obtained a second extension of deadlines. (ECF Nos. 75, 76.) The parties now stipulate and seek a third extension of deadlines because they are still conducting written discovery, have written discovery disputes pending before this Court via motion, pending before the U.S. District Court for the Central District of California, and currently in the meet-and-confer phase between counsel for the parties that they are attempting to resolve.

As of the date of this Stipulation, because the parties wish to complete written discovery to make sure they have all the relevant documents before taking the major fact witness depositions, and because the Court has not set a claim construction hearing or issued a claim construction order, the parties stipulate and respectfully submit that there is good cause for the requested extension.

COMPLETED DISCOVERY

The parties' prior stipulation details all of the fact discovery work that the parties conducted prior to April 17, 2023, including discovery motion practice, meet-and-confer work, the few limited depositions that occurred, subpoenas issued to third-parties, and patent-related infringement and invalidity contentions and supplements thereof. (*See* ECF No. 75.) For efficiency, the parties will not repeat that procedural history here. The parties will, however, identify some of the written discovery issues that remain outstanding.

On May 13, 2022, Aim High, served a subpoena on non-parties Element Sante Fe Springs ("Element") and S&N Labs ("S&N") seeking documents relating to testing done by one or both of the non-parties for Spectrum on Aim High's accused product. After Element and S&N, together with Spectrum, objected to the subpoenas, Aim High filed an action in the Central District of

1 California seeking to compel compliance with its subpoenas. *See AIM High Investment Group,*
2 *LLC v. Spectrum Laboratories, LLC*, Case 8:22-mc-00011-DOC-ADS (C.D. Cal.) (the “CDCA
3 Action”). On October 20, 2022, the Magistrate denied Aim High’s motion to compel, and Aim
4 High filed an objection to the Magistrate’s ruling on November 3, 2022. On January 24, 2023, the
5 court indicated that Aim High’s objections are under consideration. As of the current date, no
6 decision by the court has been rendered.

7 On December 16, 2022, Aim High filed a motion to strike Spectrum’s infringement
8 contentions (ECF No. 42). Spectrum filed its opposition on January 13, 2023 (ECF No. 48). Aim
9 High filed its reply on January 27, 2023 (ECF No. 52). On June 30, 2023, the Court granted Aim
10 High’s motion in part and denied it in part. (ECF No. 83.) The Order requires Spectrum to amend
11 two aspects of its infringement contentions, which Spectrum will do by the Court-ordered July 20,
12 2023 deadline.

13 On December 30, 2022, Aim High filed a motion to compel seeking a court order
14 compelling Spectrum to respond to certain discovery requests (ECF No. 45). Spectrum filed its
15 opposition on January 27, 2023 (ECF No. 51). Aim High filed its reply on February 10, 2023
16 (ECF No. 55). Aim High’s motion has not yet been decided by the Court.

17 On February 8, 2023, Spectrum filed a motion to compel seeking a court order compelling
18 Aim High to respond to certain discovery requests (ECF No. 53 – filed under seal; redacted version
19 filed February 28, 2023 – ECF No. 65). Aim High filed its opposition on February 22, 2023 (ECF
20 No. 61). Spectrum filed its reply on March 1, 2023 (ECF No. 66). Spectrum’s motion has not yet
21 been decided by the Court.

22 On February 17, 2023, Aim High filed a motion for leave to file supplemental contentions
23 (ECF No. 58). Spectrum filed its opposition on March 13, 2023 (ECF No. 71). Aim High filed
24 its reply on March 24, 2023 (ECF No. 74). Aim High’s motion has not yet been decided by the
25 Court.

26 On June 9, 2021, Spectrum filed a motion to compel seeking a court order compelling Aim
27 High to produce samples of ingredients in the *XStream* product (ECF No. 80). Aim High filed its
28 opposition on June 23, 2023 (ECF No. 81). Spectrum filed its reply on June 30, 2023 (ECF No.

82). Spectrum's motion has not yet been decided by the Court.

REMAINING DISCOVERY

The parties are still completing written discovery, and the pending motions before this Court and the CDCA Action could lead to more written discovery. Aim High expects to notice the deposition of the inventor of the patents at issue along with a Rule 30(b)(6) deposition notice to Spectrum and subpoenas to several other fact witnesses. Spectrum also intends to depose Aim High's owner, its Rule 30(b)(6) designee, and others; and Spectrum is continuing to follow-up with the issued subpoenas to third-parties. There also has not been a claim construction hearing or claim construction ruling, and the Court's scheduling order contemplates that the next phase of deadlines, such as expert discovery, not begin until after the claim construction ruling, so that the experts can incorporate the claim construction ruling into their patent-specific opinions.

GOOD CAUSE TO EXTEND DISCOVERY

The parties have been diligent in conducting discovery in this matter so far and remain diligent in doing so. The parties need additional time to complete third-party discovery, including working to obtain documents and potentially depositions from the third parties that have been subpoenaed. The parties also need additional time to complete fact witness depositions. And the parties also await the outcome of multiple discovery motions before the Court including Aim High's pending Motion to Compel, and Motion for Leave to File Supplemental Contentions as well as Spectrum's Motions to Compel as well as the still-pending Objection in the CDCA Action – decisions which are not expected to be rendered prior to the current close of discovery on August 1, 2023.

In order to allow the parties more time to complete these fact discovery tasks and consistent with the Court's order providing for extensions upon request when the Court has yet to schedule a claim construction hearing or render a claim construction order, the Parties have stipulated and agreed to extend all discovery deadlines by ninety (90) days as set forth below¹. For these reasons, this Stipulation is made for good cause and not for purposes of delay.

¹Where the revised deadline falls on a weekend, the revised deadline is the next court day.

PROPOSED SCHEDULE

Event	Deadline
Discovery Cut-Off	October 30, 2023
Claim Construction Hearing, Tutorials and Order	<u>Hearing:</u> TBD <u>Order:</u> Oct. 16, 2023 (est.) [If the Court is unable to issue its Order by Oct. 16, 2023, the Court may reset the subsequent deadlines as requested by a party or by stipulation]
Disclosure of Amended Contentions under LPR 1-18a, and Opinion of Counsel Defense under LPR 1-18b	January 15, 2024 [30 days after Claim Construction Order]
Expert Designations	December 15, 2023 [60 days after Claim Construction Order]
Rebuttal Expert Designations	Jan. 15, 2024 [30 days later]
Expert Discovery Cut-Off	Feb. 13, 2024 [30 days later]
Dispositive Motion Deadline	March 14, 2024, [30 days later]

Dated: July 13, 2023

IT IS SO AGREED AND STIPULATED:**GILE LAW GROUP, LTD**

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12 **IT IS SO ORDERED:**

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14 _____
15 UNITED STATES MAGISTRATE JUDGE

16 DATED: 7/18/2023
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